

NOTICE  
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2012 IL App (4th) 100896-U

Filed 6/5/12

NO. 4-10-0896

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Morgan County
SHAUN M. STONE,	)	No. 06CF29
Defendant-Appellant.	)	
	)	Honorable
	)	Tim P. Olson,
	)	Judge Presiding.

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JUSTICE KNECHT delivered the judgment of the court.  
Justices Pope and McCullough concurred in the judgment.

**ORDER**

¶ 1 *Held:* Because defendant's appeal presents no meritorious issues that can be raised, the motion of the office of the State Appellate Defender to withdraw as counsel on appeal is granted and the judgment of the trial court is affirmed.

¶ 2 This case comes to us on the motion of the office of the State Appellate Defender (OSAD) to withdraw as counsel on appeal on the ground no meritorious issues can be raised.

We agree and affirm.

¶ 3 I. BACKGROUND

¶ 4 A. Defendant's Trial

¶ 5 On March 2, 2006, defendant, Shaun M. Stone, his brother Randy Stone, and April Dawn Woods, were charged with participation in methamphetamine manufacturing, a Class X felony (720 ILCS 646/15(a)(1), (a)(2)(B) (West Supp. 2005)). On January 17-18, 2007,

a jury trial was held on the charge.

¶ 6 At defendant's trial, the State elicited the testimony of four members of the Illinois State Police. The testimony of these officers established during the 10 months preceding the March 2, 2006, arrest of Woods, Randy, and defendant, the police twice discovered and decontaminated active methamphetamine laboratories in Woods's residence. On the afternoon of March 2, 2006, officers from the Illinois State Police went to Woods's home to talk with her about being an informant for the police. Woods was on bond awaiting sentencing for possession of methamphetamine precursors.

¶ 7 On arrival at Woods's residence, the officers, who had been trained in methamphetamine investigations, smelled the strong odor of anhydrous ammonia. One of the officers, from the front porch, saw someone with a tattoo remove a fan from a window near the front door. That officer observed a similar tattoo on defendant's arm. Believing they stumbled upon another methamphetamine-manufacturing operation, the officers broke open several doors and windows for ventilation and identified themselves as police officers. They also yelled for anyone inside to exit. Two of the officers and Woods testified defendant, when he and Randy exited, said, "It's all mine; [Woods] don't have nothing to do with it." Woods, defendant, and Randy were arrested. A search of the house revealed evidence indicating the recent manufacturing of methamphetamine.

¶ 8 Woods testified pursuant to a plea agreement. According to Woods, she told the police before trial she arrived at her house around 3 p.m. and discovered defendant inside. She told them Ronnie Norris gave her a ride. At trial, however, Woods testified she was home when defendant arrived between 12:10 and 12:40 p.m. Randy arrived later with a bag of materials.

With the exception of the fuel containers, all of the methamphetamine-related materials found at her residence had been contained in the bag Randy brought. Woods testified she wanted defendant and Randy to leave, but she was afraid to tell them to do so. Woods was high on marijuana at the time.

¶ 9 Woods testified, about 15 minutes before the police arrived, she watched defendant place crushed Sudafed tablets, battery strips, Coleman fuel, and anhydrous ammonia into a pitcher and then place that pitcher into a Tupperware bowl full of hot water on a milk crate by the ventilated front window. She saw Randy take the anhydrous tank outside. As the police arrived, Woods saw Randy remove the fan from the front window and defendant pour the contents of the pitcher down the kitchen-sink drain. The three ran to the basement.

¶ 10 Woods testified she was serving a three-year prison sentence for possessing more than the legal amount of pseudoephedrine pills. That offense occurred in January 2006. Woods testified she also faced charges for the events of March 2, 2006. Woods testified she was testifying in this case as part of a plea bargain, in which she will be sentenced to three years for her involvement in this case, to be served concurrently with the sentence she was serving.

¶ 11 Randy testified on defendant's behalf. Randy testified he met defendant on March 2, 2006, at the courthouse. The two got a ride to Randy's house, where they stayed and visited until about 2:30 p.m. Defendant was going to Woods's house to help her pack for a move. Neither defendant nor Randy had a car. Defendant asked Randy if they could borrow Dave Miller's car to give defendant a ride to Woods's house. Randy talked to Miller around 2:15 p.m. Miller denied their request because he needed the car. Defendant made other arrangements and was taken out to Woods's house around 2:40 p.m.

¶ 12 Randy testified after defendant left, he walked over and visited with Miller. At some point, defendant called Randy to see if Miller would give defendant and Woods a ride from her house. Miller agreed. He and Randy headed to Woods's house. Miller dropped off Randy because Miller received a call and needed to leave quickly. Defendant and Woods were not ready to leave, so Randy stayed with them.

¶ 13 Randy testified when he arrived the house was disgusting. He observed urine and feces on the floor. A fan was in one window. The place smelled like pet urine. Randy sat on the couch. At some point, Woods walked to her bedroom, returned with a basket of clothes, and placed them by the front door. Defendant was on his cell phone during this time.

¶ 14 Randy testified at some point, Woods yelled from the kitchen at defendant to close the windows. Defendant was still on the phone. Randy stood and went to the window with the fan in it. As he pulled the fan from the window, he saw the vehicle with the police officers pull up. Randy told Woods someone was there. Woods began screaming from the kitchen, telling them to run. Defendant stood and appeared confused. They began walking toward the kitchen, the entry to which Woods had concealed with a blanket. When defendant and Randy walked through the blanket into the kitchen, defendant and Randy asked what she had been doing. Woods was hysterical. The three went to the basement. Defendant attempted to leave the house, but Woods was screaming at him.

¶ 15 Randy testified he heard the men yell, "Illinois State Police." Believing he had done nothing wrong, Randy walked up the steps. He then saw the door kicked open and two officers enter with guns drawn. The officers threw them to the ground and handcuffed them. Randy admitted he was held on charges for possession of methamphetamine or ammonia for the

events of March 2, 2006.

¶ 16 Defendant testified on his own behalf. According to defendant, Woods called him multiple times, beginning around noon on March 2, 2006, to help her move things out of her house. Defendant went to Woods's house around 2:30 p.m. He noticed a fan in the window. It took approximately eight knocks on the door for Woods to answer. Defendant heard dogs barking inside. Woods seemed nervous. Woods was not ready to leave; she was waiting for a telephone call. Defendant called the house "nasty." Woods had three dogs in the house and there was urine and feces on the floor. There was trash by the front door. It was cool outside. Defendant believed Woods had the fan in the window to help with the smell.

¶ 17 While Woods continued to get ready, defendant spent his time texting and talking with his girlfriend. The two were arguing because defendant's girlfriend did not want him at Woods's house, which had already "been busted twice for meth labs." Woods was in the kitchen area, and there was a blanket over the doorway preventing defendant from seeing into the kitchen. Defendant did not go into the kitchen.

¶ 18 Defendant testified Randy arrived approximately 15 to 20 minutes after he did. When Randy arrived, defendant let him in. Defendant remained on the telephone with his girlfriend. Woods was in the kitchen. Defendant did not "recall her \*\*\* yelling to my brother Randy to get the fan out [of] the window," but he saw Randy lifting the window and taking the fan from the window. Randy yelled about the black truck arriving. Defendant looked out the window and saw someone with a gun exit the vehicle.

¶ 19 Defendant testified he yelled someone with a gun was in the driveway. Woods looked out from the kitchen-area window, cursed, and said to hide. Woods ran to the back door,

near the entrance to the basement. Defendant ran with her. Randy followed. Woods was hysterical. They hid in the basement. Woods said to hide and the officers would leave. Defendant heard windows breaking and someone say, "Illinois State Police." He responded by going up the stairs with Randy. Defendant asked what was happening. He denied saying it was all his, not Woods's.

¶ 20 Defendant admitted he had been arrested for making methamphetamine approximately four or five months before March 2, 2006. Defendant stopped making methamphetamine because his girlfriend did not approve. He used Woods's residence for making methamphetamine before, but stopped because Woods's residence had been raided and he feared Woods was working with the police to set him up.

¶ 21 The jury found defendant guilty. The trial court sentenced defendant to a prison term of 18 years.

¶ 22 B. Motion for a New Trial

¶ 23 In April 2007, defendant moved for a new trial. In his motion, defendant alleged Woods was arrested on January 25, 2006, for possession of methamphetamine. She was released in February on a recognizance bond. While on bond, Woods was arrested with defendant for the participation in the production of methamphetamine for the events of March 2, 2006. On May 16, 2006, Woods pleaded guilty to the possession-of-methamphetamine offense and was sentenced to a prison term of three years. On January 25, 2007, eight days after defendant's trial began, Woods was released on recognizance bond for the March 2, 2006, offense. Defendant further alleged it was not disclosed to the defense Woods would serve no time for the March 2, 2006, offense.

¶ 24 At the hearing on the motion, the trial court denied defendant's motion for a new trial. The court concluded the jury was informed Woods would receive no additional jail time for the March 2, 2006, offense in exchange for her testimony and found Woods "was subject to rigorous cross examination, almost unfettered." The court found defendant was not denied a fair trial.

¶ 25 C. First Postconviction Petition

¶ 26 In October 2008, defendant filed a *pro se* petition under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 to 122-8 (West 2008)). Defendant alleged trial counsel, Michael Hankins, filed neither a motion to reconsider his sentence nor a notice of appeal. Defendant asked the trial court to allow him to file a late notice of appeal. The trial court granted defendant's petition.

¶ 27 D. Direct Appeal

¶ 28 In his appeal, defendant argued the State allowed the accomplice witness to testify falsely she would receive a three-year prison sentence for her participation in the crime when that witness actually served no time, denying him a fair trial. This court determined any possible error was harmless because Woods testified she would not serve any additional time in prison in exchange for her testimony and she did not. We further observed the jurors were informed Woods "was receiving a very favorable deal from the State even if the specific terms of the deal were not fully before them." *People v. Stone*, No. 4-08-0757, slip order at 18 (Sept. 29, 2009) (unpublished order under Supreme Court Rule 23).

¶ 29 E. Second Postconviction Petition

¶ 30 In March 2010, defendant moved *pro se* for leave to file a successive

postconviction petition. Attached to his motion for leave were a *pro se* postconviction petition and affidavits from defendant's mother Carolyn Barton and defendant. The trial court concluded because it considered the first *pro se* postconviction petition as a motion to allow the filing of a late notice of appeal, it did not "see a problem" with the second postconviction petition. The court appointed counsel to represent defendant.

¶ 31 In August 2010, defendant filed an amended postconviction petition. Defendant alleged Hankins provided ineffective assistance for failing to (1) conduct a reasonable investigation of witnesses listed by both the State and defendant as potential witnesses, (2) withdraw as counsel despite defendant's request for him to do so, (3) offer into evidence a videotape that would have corroborated defendant's testimony, (4) consult with a plumber regarding the liquid found in Woods's plumbing to ascertain whether the substances were due to recent or current manufacturing, (5) challenge the State's evidence about the substances forming the basis for the charge, (6) consult with defendant on important issues, (7) communicate with defendant's family members who attempted to speak with him, and (8) file a motion to reconsider or reduce sentence. Defendant further argued Hankins inadequately prepared Randy for his testimony at trial, coerced defendant to testify on his own behalf, and, because of a large case load, did not have sufficient time to prepare adequately for defendant's trial. Defendant also argued his sentence was excessive and disproportionate to similarly situated codefendants. Defendant last argued he was denied due process when the State introduced the perjured testimony of Woods, who lied about defendant's involvement and about her plea deal.

¶ 32 In August 2010, the State filed a motion to dismiss defendant's postconviction petition and answer. The State asked the trial court, if it denied the motion to dismiss, to treat the



filing as its answer.

¶ 33 In November 2010, an evidentiary hearing was held. At the hearing, Barton, defendant's mother, first testified. Throughout the course of defendant's trial, Barton "constantly" attempted to maintain contact with Hankins. Barton, several times, went to Hankins's office and "about the only thing he really wanted to talk to [her] about was when [she] was going to make another payment." Barton testified she had information, letters from Woods's to Barton's niece, she tried to provide to Hankins. In one of the letters, Woods "was supposed to have wrote [(sic)] that she did all the, made all the meth, but [defendant] was getting all the credit." Barton testified the information she had for Hankins related to potential witnesses.

¶ 34 Amanda Stone, defendant's cousin, testified she helped with defendant's defense. Amanda testified she spent "at least a good 40 to 80 hours in Hankins's office meeting him" about the case. Amanda testified some nights she would go to his office at 8:30 p.m. and Hankins would be in his office working. Hankins discussed the case with her. Amanda testified defendant was offered a deal for 10 years in this case, with Sangamon County offering 3 years in its case. Both she and Hankins urged him to take the deal. Defendant refused, stating he was not pleading guilty to a crime he did not commit. Amanda testified Hankins told him "if you are not going to take the deal, then you need to get on the stand and basically prove yourself to the jury." Defendant consented. Hankins told him to admit making methamphetamine in the past but to deny having made it then.

¶ 35 Amanda testified she discussed the letters Barton referred to with Hankins. Amanda believed defendant was innocent.

¶ 36 Defendant testified regarding his allegations Hankins failed to investigate

Woods's criminal history. Defendant stated he told Hankins the State was offering Woods an illegal sentence. He knew Woods, because she was out on bond during the events of March 2, 2006, would have to serve consecutive sentences, but the State was offering a concurrent sentence. Defendant told Hankins about this fact, and Hankins responded he would mention it to the court, but Hankins did not.

¶ 37 Defendant testified Hankins failed to investigate Dave Miller. Defendant stated Hankins met with Miller and Chris Reif, the Morgan County State's Attorney. Miller, who was facing charges in another case, told Hankins what occurred, but Reif did not like what was said. Defendant believed Miller told Hankins that Reif threatened him. Hankins told defendant they were going to videotape Miller's statement. Defendant believed Miller's statement was videotaped, but the videotape was not introduced at trial.

¶ 38 According to defendant, Miller would have testified he gave defendant a ride to Woods's house, Woods was there when defendant arrived, and defendant did not carry a black bag or have chemicals to make crystal methamphetamine. This would have contradicted Woods's testimony defendant was already at her house when she arrived. Miller, however, did not testify in this case. He was serving a six-year prison sentence on the "same kind of case that [defendant had]." Two to three days before trial, Hankins told defendant Miller would not testify because Reif threatened to charge Miller with the same charge defendant was facing for the events of March 2, 2006. Miller wanted nothing more to do with this case.

¶ 39 Defendant testified he told Hankins he questioned what was in the P-trap of the sink. Defendant believed it may be food or older methamphetamine and he wanted someone to look at it. Hankins did not say why he did not contact a plumber about this.

¶ 40 Defendant testified, because of his criminal history, he did not want to testify. He wanted Miller to testify instead to show defendant arrived at Woods's house with nothing. Hankins asked defendant's uncle to talk to defendant and tell him he needed to testify because they could not foretell what Miller would say. Defendant stated if he knew he did not have to testify, he would not have. Hankins told defendant if he did not testify he would be found guilty and receive a lengthy sentence.

¶ 41 Defendant testified Hankins should have investigated Ronnie Norris, who was married to defendant's friend. Woods, when initially making statements about the case, stated Norris and Amanda Ransom dropped her off at the house and defendant was already there cooking methamphetamine. Defendant believed Norris would state she did not drop Woods off at the house. Defendant testified Hankins told Norris she would not have to testify.

¶ 42 When asked about his allegations regarding Hankins's caseload, defendant said Hankins told him he was not ready to proceed to trial. The two argued about this, as defendant was ready. Hankins then stated he was owed money.

¶ 43 Defendant testified he told Hankins he wanted him to file a motion to reconsider the sentence and an appeal. Hankins called defendant at the Department of Corrections (DOC). Defendant asked Hankins the reason he did not file the appeal. Hankins told him he had no grounds for a direct appeal. Hankins also told him he did not file the motion to reconsider and then hung up.

¶ 44 Defendant testified regarding Woods. Since Woods was released from prison, defendant talked to her once a week. He testified, "all she does is tell me she's sorry." Woods told him she did what she had to do to get the deal she was offered. Hankins failed to raise the

issue that Woods's sentence under the deal was illegal.

¶ 45 On cross-examination, defendant stated he did not remember when the trial court ruled the State could not use defendant's criminal history to impeach him. Defendant admitted Woods did not testify at court or file an affidavit on his behalf, but stated it was because she feared going to jail. Defendant testified he had not talked to Miller, but Miller told his brother he wanted to testify but could not because "he had a whole bunch of outstanding child-support bills" and feared going to jail for those. Defendant had not spoken to Miller. Norris also did not file an affidavit. Defendant denied knowing he could subpoena witnesses to testify. On redirect examination, defendant testified he did not provide his postconviction counsel those witnesses' addresses.

¶ 46 The State called Hankins to testify. Hankins testified he spent "quite a deal of time" talking to Amanda about the case. Amanda was the "point guard" for the family and the two discussed "strategy and things." Hankins stated he spoke to Barton as well. Hankins testified he spoke with Miller. Miller, who faced other charges, was represented by counsel. Hankins had to get permission to speak with him. The two spoke "by phone a couple times." After Miller was sentenced to the DOC, Hankins obtained a writ to bring Miller to court. During one of the late nights at the jail, defendant and Hankins met with Miller. At one point, Miller said he should not be put on the stand. Hankins was surprised by this and questioned Miller about his decision. Miller stated the State's Attorney, Reif, had gone to the jail and threatened to charge Miller if he testified in the case. The matter was discussed with the trial court in chambers. Hankins further testified:

"I started to press him and go, 'Well, wait a minute now.

We've talked about it. We've gone over it. You, you were going to testify as to the time line as to when [defendant] was dropped off prior to Randy, which I had thought was very important to [defendant's] defense.' And that's when he looked at me and basically reiterated, 'You don't want to put me on the stand.' I'm like, I said so hypothetically, 'are you going to indicate that [defendant] was going out there for the purpose of making methamphetamine?' And he grinned and looked at me and kind of said, 'You don't want to put me on the stand,' again."

¶ 47 Hankins decided it was too dangerous to put Miller on the stand. Hankins also attempted to talk to Vicki Lockeby, Miller's girlfriend, but she refused. After defendant's March 2006 arrest, Miller was arrested for a different methamphetamine laboratory. He was sentenced to six years for that offense and simply wanted to serve his time. Hankins did not recall discussing a videotape.

¶ 48 Hankins testified he tried to talk to Woods, but Woods's counsel would not allow it. Hankins testified he knew Norris, as he had represented her husband in other matters. Hankins believed Norris's testimony would not help the case. Hankins emphasized he had impeached Woods's testimony, and Woods admitted at trial she lied to the officers. Hankins testified he knew about the letters referenced by Barton. Hankins testified one of the letters was used to impeach Woods.

¶ 49 Hankins testified he spoke with defendant about his testifying in detail on several occasions. Hankins reviewed the options for defendant. The decision was defendant's. Hankins

believed it became "even more crucial" for defendant to testify after Miller refused to do so. Hankins also testified defendant had been arrested in a case in Sangamon County. He was on bond from that case when he was arrested in this case. Hankins believed Sangamon County's case against defendant was stronger than the one in which he represented him. The State in the Sangamon County case indicated it would not offer anything less than 10 years' imprisonment, because defendant had already served "double digits in DOC." Hankins wanted to plead them together, because, even if he got an acquittal, defendant was facing a significant sentence in Sangamon County. Hankins believed the Sangamon County offer was 12 years. When the State offered 10 years in this Morgan County case, Sangamon County offered 3. Hankins believed defendant, with day-for-day credit, would end up serving 5 1/2 years. Defendant refused, insisting he did not want to plead to something he did not do.

¶ 50 Hankins testified, regarding statements he did not effectively inquire into the weighing of the product, the State had to prove the weight of the substance was greater than 15 grams but less than 100 grams. Hankins recalled the evidence showed "well in advance of 15 grams." Hankins also testified the strategy "was wrong place, wrong time." Hankins believed if he questioned that evidence, he would bolster the witness's credibility and take the focus away from his theme of the case.

¶ 51 Hankins testified his caseload had "nothing to do with" his presentation of the case. He did ask defendant to sign a form that acknowledged the plea offer and defendant's decision to decline the offer. Hankins did not believe he was ineffective. Hankins testified he came very close to getting an acquittal, stating the jury foreman later told him the initial vote was 11 to 1 for acquittal. Hankins stated he never agreed to do the appeal, testifying he was paid very

little for the case. He assumed the trial court would appoint an appellate defender. Hankins called defendant "very polite" and "respectful." Defendant was adamant he was innocent.

¶ 52 Hankins testified he should probably have filed a motion to reconsider sentence. Hankins, however, believed it would have been ineffective. Hankins did not recall a discussion about seeking a plumber to testify. Hankins testified he did elicit on cross-examination and state in summation that no one could say how long the stuff had been in the drain.

¶ 53 At the close of the hearing, the trial court denied defendant's petition. The court rejected defendant's disparity-of-sentences argument, upon observing defendant was sentenced following a trial while the other two sentences followed plea arrangements. The court concluded defendant forfeited his excessive-sentence argument because he failed to raise it on direct appeal. The court refused to relitigate the issue of Woods's credibility, and the issue had been resolved by the appellate court on direct appeal. The court observed the State had other evidence, concluding it was not convinced the State even needed Woods's testimony to convict defendant.

¶ 54 The trial court found no error in Hankins's actions related to Miller. The court concluded Miller would not do anything to benefit anyone other than himself. The court further observed, without an affidavit signed by Miller, it could not discern what Miller would have said.

¶ 55 The trial court agreed the defense theory would not have been developed absent defendant's testimony. The court did not believe defendant was unaware he did not have to testify. The court observed it did not allow the State to use some "rather serious prior convictions" to impeach defendant, and found defendant "did a great job testifying." While finding defendant appeared more credible than Woods, the trial court observed the case was not "Woods versus Stone." The court observed defendant was present at an ongoing meth house that smelled

of methamphetamine cooking, a person who looked like defendant attempted to shut the window, and the officers stated defendant admitted the methamphetamine was his.

¶ 56 The trial court found Hankins provided the effective assistance of counsel. The court concluded defendant was provided "an extremely fair trial," even though the verdict "could have gone either way."

¶ 57 Defendant filed timely notice of appeal. The trial court appointed OSAD to represent defendant. OSAD moved to withdraw as counsel under *Pennsylvania v. Finley*, 481 U.S. 551, 107 S. Ct. 1990 (1987). Notice of OSAD's motion was sent to defendant. This court gave defendant time to file additional points and authorities, which defendant did not do.

## ¶ 58 II. ANALYSIS

### ¶ 59 A. Proceedings Under the Act

¶ 60 The Act offers "a remedy whereby defendants may challenge their convictions or sentences for violations of federal or state constitutional law." *People v. Coleman*, 206 Ill. 2d 261, 277, 794 N.E.2d 275, 286 (2002). The Act sets up a three-stage process by which a defendant may receive postconviction review of a claim his conviction led to a substantial denial of his constitutional rights. *People v. Dopson*, 2011 IL App. (4th) 100014, ¶17, 958 N.E.2d 367, 372 (2011). In the first stage of proceedings under the Act, the trial court will consider whether the postconviction petition is frivolous or patently without merit. *People v. Andrews*, 403 Ill. App. 3d 654, 658-59, 936 N.E.2d 648, 651 (2010). The court must dismiss any petition it finds to be frivolous and patently without merit. 725 ILCS 5/122-2.1(a)(2) (West 2008). If the postconviction petition survives the first-stage review, it advances to the second stage. *Andrews*, 403 Ill. App. 3d at 658, 936 N.E.2d at 653. At this stage, counsel is appointed and the *pro*



se petition may be amended. *Andrews*, 403 Ill. App. 3d at 658, 936 N.E.2d at 653. The State may answer the petition or move to dismiss it. 725 ILCS 5/122-5 (West 2008). The proceeding will advance to the third stage if the State answers the petition or the court denies the motion to dismiss. At the third stage, the defendant may submit evidence to support his or her claim. *Andrews*, 403 Ill. App. 3d at 658-59, 936 N.E.2d at 653; 725 ILCS 5/122-5 (West 2008). At the third-stage evidentiary hearing, the defendant bears the burden of making "a substantial showing of a deprivation of constitutional rights." *Coleman*, 206 Ill. 2d at 277, 794 N.E.2d at 286.

¶ 61 This appeal follows a third-stage evidentiary hearing, after which the trial court denied defendant's petition. We will not overturn a trial court's decision following an evidentiary hearing unless the decision is manifestly erroneous. *Coleman*, 206 Ill. 2d at 277, 794 N.E.2d at 286. Manifest error is "error that is 'clearly evident, plain, and indisputable.'" *Coleman*, 206 Ill. 2d at 277, 794 N.E.2d at 286 (quoting *People v. Ruiz*, 177 Ill. 2d 368, 384-85, 686 N.E.2d 574, 582 (1997)).

¶ 62 B. Effectiveness of Counsel

¶ 63 Under *Strickland v. Washington*, 466 U.S. 668, 687, 694, 104 S. Ct. 2052, 2064, 2068 (1984), a defendant can prove his attorney provided ineffective assistance by establishing both of the following: (1) his counsel's "representation fell below an objective standard of reasonableness," and (2) absent that error, there is a reasonable probability the trial's outcome would have been different. *People v. Young*, 341 Ill. App. 3d 379, 383, 792 N.E.2d 468, 472 (2003). Because a defendant must prove both prongs of the *Strickland* test to prevail, we may resolve an ineffective-assistance claim if we find the defendant cannot prove one of the grounds without deciding the other. *People v. Little*, 335 Ill. App. 3d 1046, 1052, 782 N.E.2d 957, 963

(2003).

¶ 64 In considering the first part of the *Strickland* test, we consider whether the representation was objectively unreasonable "on a circumstance-specific basis, viewed not in hindsight, but from the time of counsel's conduct, and with great deference accorded counsel's decisions on review." *People v. Fuller*, 205 Ill. 2d 308, 330-31, 793 N.E.2d 526, 541-42 (2002). We must also decide whether the challenged conduct was a matter of trial strategy. Strategy decisions "are virtually unchallengeable." *Fuller*, 205 Ill. 2d at 331, 793 N.E.2d at 542. "[A] defendant must overcome the strong presumption that the challenged action or inaction of counsel was the product of sound trial strategy and not of incompetence." *People v. Coleman*, 183 Ill. 2d 366, 397, 701 N.E.2d 1063, 1079 (1998).

¶ 65 OSAD maintains it is unable to discern any meritorious issue as to defendant's claim his trial counsel was ineffective. We agree.

¶ 66 1. *The Alleged Failure To Consult With Defendant and His Family*

¶ 67 No meritorious argument can be made on appeal the trial court erred in finding Hankins not ineffective on this ground. The record shows Hankins met with defendant and conferred with him regarding the issues. The testimony shows Hankins met with defendant's mother and Hankins spent many hours with defendant's cousin preparing for the trial. The testimony shows Hankins met with Randy, even in defendant's presence. Defendant has not identified any evidence in the record or provided any additional evidence to show any additional consultations would have resulted in better assistance. Defendant cannot show the court's decision is manifestly erroneous.

¶ 68 2. *The Alleged Failure To Withdraw as Counsel*

¶ 69           There is no meritorious argument to be raised on appeal regarding defendant's allegation counsel was ineffective for not withdrawing from the case. No evidence was presented on this issue before the trial court.

¶ 70                               3. *The Investigation and Impeachment of Woods*

¶ 71           There is no meritorious argument to be raised on appeal Hankins provided ineffective assistance of counsel in the investigation and impeachment of Woods. Defendant maintained, in his amended petition, Hankins failed to investigate Woods' criminal history for convictions of offenses that would have cast doubt on her credibility. Defendant presented no evidence to show Hankins would have found any offenses other than those brought up at trial. Without such proof, defendant cannot prove the second prong of the *Strickland* test: there is a reasonable probability the outcome of his trial would have been different absent the error (*Young*, 341 Ill. App. 3d at 383, 792 N.E.2d at 472).

¶ 72           Defendant also maintained Hankins's impeachment of Woods was ineffective. In rejecting this claim, the trial court found Woods was extensively cross-examined. The court found Hankins did all he could do with the information he had at the time and informed the jury Woods would serve no additional time for her conduct on March 2, 2006, in exchange for her testimony. There is no evidence showing this decision is manifestly erroneous.

¶ 73           In addition, at the evidentiary hearing, defendant asserted Woods, since the trial, repeatedly apologized to Stone for lying on the stand. Defendant, however, presented no affidavit or evidence from Woods to support his claim. There is no meritorious argument to be made the trial court's rejection of defendant's bare assertion is manifestly erroneous.

¶ 74                               4. *The Failure To Call Witnesses*

¶ 75 No meritorious argument can be raised Hankins was ineffective in not calling Miller, Norris, a plumber, or Vicki Lockeby. Miller had his own legal troubles and refused to testify. No affidavits, testimony, or other evidence establish how Miller would testify in defendant's trial, if he were called to do so. As to Lockeby, Miller's girlfriend, she refused to testify and there are no affidavits, testimony, or other evidence to show how she would testify. Defendant did not establish a plumber could have or would have been able to testify as defendant says he would. Defendant, in regards to these proposed witnesses, cannot prove the second prong of *Strickland*, *i.e.*, absent Hankins's decision not to put them on the stand, there is a reasonable probability the outcome of his trial would have been different.

¶ 76 As for Norris, Hankins testified her testimony would not have been helpful. Defendant believed Norris's testimony would impeach Woods's statement to the police that Norris dropped Woods off at her house. Hankins cross-examined Woods about her statement to the police defendant was at her house when she arrived, proving Woods lied. Hankins's decision Norris's testimony would not have been helpful is a strategic decision, presumed to be reasonable. See *Coleman*, 183 Ill. 2d at 397, 701 N.E.2d at 1079. Moreover, no meritorious argument can be made had the jury been aware of this other lie regarding Woods's arrival at her residence there is a reasonable probability the outcome would have been different.

¶ 77 *5. Trial Counsel's Cross-examination of the Forensic Chemist*

¶ 78 No meritorious argument can be made Hankins was ineffective in his cross-examination of the forensic chemist in the case. Defendant maintained Hankins should have cross-examined the chemist regarding the weight and nature of the substances found.

¶ 79 Hankins testified in the evidentiary hearing he did not extensively cross-examine

the chemist for two reasons. First, the amount found was well within the amount necessary to support the charges. Second, the theory of the case was the methamphetamine belonged to Woods, not defendant.

¶ 80 Hankins's decisions were strategic and entitled to the presumption of reasonableness. See *Coleman*, 183 Ill. 2d at 397, 701 N.E.2d at 1079 (holding strategic decisions are presumed to be reasonable). No meritorious argument can be made Hankins was unreasonable in quibbling over the amount found as the methamphetamine-manufacturing charge defendant faced involved not less than 15 grams and not more than 100 grams of a substance containing methamphetamine (720 ILCS 646/15(a)(1), (a)(2)(B) (West Supp. 2005)), while the chemist's testimony indicates more than 46 grams were found. In addition, no evidence showed the chemist's findings were flawed.

¶ 81 *6. Defendant's Trial Testimony*

¶ 82 No meritorious argument can be made Hankins coerced defendant into testifying. The trial court made a credibility determination on this issue, believing Hankins did not coerce defendant and defendant was well aware he had the right not to testify. The record does not show the court's credibility determination was wrong. No manifest error is shown on this ground.

¶ 83 *7. Counsel's Failure To File a Motion To Reconsider Sentence*

¶ 84 No meritorious argument can be made Hankins provided ineffective assistance in failing to file a motion to reconsider sentence. Hankins testified he believed defendant would not receive sentencing relief due to defendant's previous Class X conviction and the nature of the offense involved.

¶ 85 Defendant cannot show a reasonable probability the outcome would have been different had the motion to reconsider sentence been filed. See *Young*, 341 Ill. App. 3d at 383, 792 N.E.2d at 472 (stating the factors necessary to prove the ineffective assistance of counsel). "The purpose of a motion to reconsider sentence is not to conduct a new sentencing hearing, but rather to bring to the circuit court's attention changes in the law, errors in the court's previous application of existing law, and newly discovered evidence that was not available at the time of the hearing." *People v. Burnett*, 237 Ill. 2d 381, 387, 930 N.E.2d 953, 957 (2010). During the postconviction proceedings, defendant did not identify any changes in the law, trial court errors in applying existing law, or any newly discovered evidence that should have been raised in a motion to reconsider sentence. The record also does not reveal any basis showing a reasonable probability such a motion would have been granted.

¶ 86 8. *Counsel's Failure To File Notice of Appeal*

¶ 87 No meritorious argument can be made on appeal Hankins was ineffective for failing to file notice of appeal. This issue is barred by *res judicata* as defendant was given leave to file late notice of appeal and his direct appeal was heard.

¶ 88 9. *Counsel's Caseload*

¶ 89 No meritorious argument can be raised on appeal regarding Hankins's caseload and its alleged bearing on defendant's case. The trial court found Hankins provided effective assistance. As our analysis above shows, this decision was not manifestly erroneous. Defendant has not shown Hankins's caseload had any bearing on Hankins's representation of him.

¶ 90 C. Sentencing

¶ 91 No meritorious argument can be raised on appeal defendant was denied due

process due to an excessive or disparate sentence. Both of these issues could have been raised on direct appeal, but were not, and are forfeited. See *People v. Brooks*, 371 Ill. App. 3d 482, 485, 867 N.E.2d 1072, 1074 (2007).

¶ 92 D. State's Knowing Use of Perjury

¶ 93 No meritorious argument can be raised on appeal defendant's constitutional rights were violated when the State, allegedly, presented the false testimony of Woods. Defendant alleged in his postconviction petition that Woods lied when she said defendant was involved in manufacturing methamphetamine at her residence on March 2, 2006.

¶ 94 On direct appeal, this court resolved defendant's claim Woods lied about the deal she would receive in exchange for her testimony. *People v. Stone*, No. 4-08-0757 (Sept. 29, 2009) (unpublished order under Supreme Court Rule 23). This claim is different. Defendant's only "new" evidence to support this claim is his own testimony Woods often apologized to him since his conviction. No affidavits or other testimony support this claim. The trial court rejected it. The record does not show that decision was manifestly erroneous.

¶ 95 III. CONCLUSION

¶ 96 We grant OSAD's motion to withdraw as counsel and affirm the trial court's judgment.

¶ 97 Affirmed.